



U.S. Department of Justice
Office of Information Policy
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Washington, DC 20530-0001

Telephone: (202) 514-3642

Emma Best
MuckRock News
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Re: Appeal No. DOJ-AP-2019-001067
Request No. 18-00864-F
DRC:JNW

VIA: Email

Dear Emma Best:

You appealed from the action of the Drug Enforcement Administration (DEA) on your Freedom of Information Act request for access to all drafted, submitted, or received SF-716 forms produced from January 1, 2001 through December 31, 2017. I note that your appeal concerns the withholdings made by DEA and the adequacy of DEA's search. Please note that this Office was closed due to a lapse in funding appropriations between December 22, 2018 and January 25, 2019, which resulted in a delay in responding to your appeal.

After carefully considering your appeal, I am affirming, on partly modified grounds, DEA's action on your request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests such as personal privacy, privileged communications, and certain law enforcement activities. DEA properly withheld certain information because it is protected from disclosure under the FOIA pursuant to:

5 U.S.C. § 552(b)(3), which concerns matters specifically exempted from release by statute (in this instance, 50 U.S.C. § 3024(i)(1), which pertains to the National Security Act of 1947 and the Central Intelligence Agency Act of 1949);

5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties;

5 U.S.C. § 552(b)(7)(C), which concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties; and

5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions.

Please be advised that for each of these exemptions, it is reasonably foreseeable that disclosure of the information withheld would harm the interests protected by these exemptions.

As to your appeal concerning the adequacy of DEA's search for responsive records subject to the FOIA, please be advised that records that might have been responsive to your request were destroyed pursuant to the agency's record retention and disposition schedules approved by the National Archives and Records Administration. Because these records were destroyed, DEA could not determine whether they would have been responsive to your request. Specifically, DEA only retains these records for six years, and thus does not maintain any of these forms for prior years. I have determined that DEA's response was correct and that it conducted an adequate, reasonable search for such records.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of DEA in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

5/23/2019

X 

Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: SEAN O'NEILL